IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9266 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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B.N.BHATT - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR MS TRIVEDI for Petitioner No(s).: 1.

MR RAJENDRA M DESAI for Petitioner No(s).: 1.

MR HS MUNSHAW for Respondent No(s).: 1.

DS AFF.NOT FILED (N) for Respondent No(s).: 2, 3,4.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 18/08/2005

ORAL JUDGMENT

1. Leave to delete first line in the description of respondent No.1 in the cause title of the petition and instead of State of Gujarat description of respondent No.1 to be shown as the Member – Secretary, Gujarat Water

Supply & Sewerage Board, Jal Seva Bhavan, Sector 10A, Gandhinagar. Office may carry out the amendment in the cause title accordingly.

2. RULE. Mr.Munshaw, learned advocate waives service of notice of rule on behalf of the respondents. With the consent of the parties, matter is taken up for final hearing today.

3. By filing this petition, the petitioner has prayed for quashing and setting aside the order dated 6-9-2002 which is at Annexure-A to the petition. By the said order, the benefit of deemed date given to the petitioner is withdrawn. The petitioner was given benefit of deemed date vide order dated 27th March, 2000 which is at annexure-C, page 16. By said order, the petitioner was given benefit in the cadre of Senior Clerk with effect from 17-11-1988. It seems that the petitioner is promoted on the post of Senior Clerk on 28th May, 1993 but ultimately, he was given benefit of deemed date with effect from 17-11-1988, as per the said order.

4. However, as per the subsequent order at annexure-A dated 6-9-2002 the said benefit is taken away on the ground that the petitioner has not passed departmental

examination at the relevant time and, therefore, even though the petitioner was senior clerk he was not entitled to get promotion earlier. The Chief Administrative Officer of the Board accordingly came to the conclusion that since there is no provision for giving deemed date of promotion, the aforesaid order giving deemed date with effect from 17-11-1988 is set aside. The said order is impugned at the instance of the petitioner in this petition.

5. Mr.Trivedi, learned advocate for the petitioner submitted that the impugned order is passed without hearing the petitioner and by virtue of a subsequent order dated 9-7-2003 passed on the basis of impugned order, it is decided to recover the amount paid to the petitioner on the basis of earlier order giving deemed date of promotion. He submitted that such order could not have been passed against the petitioner without hearing the petitioner. Learned advocate for the petitioner has relied upon the decision of learned Single Judge of this Court passed in Special Civil Application No.10361/2003 wherein it was held that without issuing show cause notice and without hearing the concerned petitioner, the impugned order could not have been passed. In paragraph 9 of the said order this Court has observed as under :

> “9. If the juniors to the petitioner were permitted to steal a march over the petitioner in 1988, they cannot be permitted to make a grievance about the deemed date given to the petitioner of 1988. In fact, the petitioner was given deemed date in 1994 and the impugned order has been passed in June, 2003, after delay of four years. There is nothing to show that any complications have arisen on account of the deemed date of 8.11.1988 given to the petitioner by order dated 24.10.2000. Hence, the impugned order is quashed and set aside on the ground that the same was passed without issuing any show cause notice and without an opportunity of being heard to the petitioner. If, after considering the aforesaid findings and observations, the authorities are still of the view that notwithstanding such gross delay, question of deemed date already given in 2000 is still required to be reconsidered, then only the respondent authority shall issue a fresh show cause notice and give the petitioner an opportunity of being heard and in that case, the petitioner will be at liberty to raise the plea of gross delay and also other defence on merits.”

6. It is not in dispute that before passing the impugned order no hearing was given to the petitioner and, in my view, it was not open for the department to pass such order in violation of principles of natural justice, especially when the order in connection with deemed date of promotion had existed for about two years. Considering the said aspect of the matter, without going into the merits of the issue and on the ground of non-compliance of principles of natural justice, the impugned order dated 6-9-2002 which is at Annexure-A is quashed and set aside and the respondents are directed to pass

appropriate order after hearing the petitioner. It is clarified that issue regarding whether the petitioner was entitled to get deemed date of promotion or not is not decided by this Court and it is for the authority to pass appropriate order in this regard after hearing the petitioner.

7. Accordingly, impugned order at Annexure-A is quashed and set aside. Since the impugned order is set aside, earlier benefit given to the petitioner shall continue till appropriate fresh order is passed in accordance with law after hearing the petitioner. It is clarified that if any amount is recovered from the salary of the petitioner the department is not obliged to refund the said amount, however, no further recovery shall be effected till the fresh order is passed, as stated herein above.

8. Accordingly, this petition is allowed. Rule made absolute. No order as to costs.

(P.B.MAJMUDAR, J.)

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